

Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH

In the matter of

Appeal No. 23 of 2019

Fawad Yusuf Securities (Pvt.) Ltd

...Appellant

versus

Commissioner, Securities Market Division

...Respondent

Date of Hearing: 10/10/19

Present:

For the Appellant:

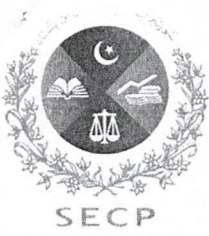
- i. Mr. Fawad Yusuf, CEO, Fawad Yusuf Securities (Pvt.) Ltd
- ii. Mr. Shafqat Ali, Consultant, Fawad Yusuf Securities (Pvt.) Ltd
- iii. Mr. M. Hasnain, Compliance Officer, Fawad Yusuf Securities (Pvt.) Ltd
- iv. Mr. Ali Ahmed, Compliance Officer, Fawad Yusuf Securities (Pvt.) Ltd

For the Respondent:

- i. Ms. Amina Aziz, Director (SMD)
- ii. Ms. Mehwish Naveed, Management Executive (SMD)

ORDER

1. This Order is passed in the matter of Appeal No. 23 of 2019 filed under section 33 of the Securities and Exchange Commission of Pakistan Commission Act, 1997 (Act) against the order (Impugned Order) dated 08/04/19 passed by the Commissioner, Securities Market Division (Respondent).
2. The brief facts of the case are that Fawad Yusuf Securities (Private) Limited (Appellant) is a trading rights entitlement certificate holder of the Pakistan Stock Exchange (PSX) and is licensed as a securities broker under the Securities Act, 2015. The Joint Inspection Team of PSX, Central Depository Company and National Clearing Company of Pakistan Limited conducted an inspection of the Appellant to assess its compliance with the regulatory



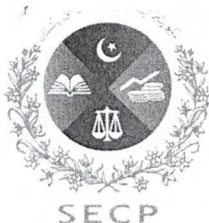
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requirements contained in the Securities and Exchange Commission of Pakistan (Anti-Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (AML Regulations). The Inspection, inter alia, revealed the following:

- i. The Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) policy of Appellant did not meet the requirements of the Regulations.
- ii. The Appellant has not established internal audit function.
- iii. The Appellant had not documented the date on which the Customer Due Diligence (CDD) was performed.
- iv. The Appellant has failed to obtain evidence relating to the source of income of sixteen (16) clients.
- v. The Appellant has failed to establish beneficial ownership of four clients.
- vi. The Appellant has assigned incorrect risk ratings to seven (7) clients.
- vii. The Appellant has not developed an ongoing mechanism to ensure that the transactions were consistent with its knowledge of the customers.
- viii. Compliance officer did not perform his job according to Regulations.

3. A Show Cause Notice dated 07/02/19 (SCN) was served on the Appellant. The Appellant submitted its reply vide letter dated 20/02/19 and hearing in the matter was held on 26/02/19. Mr. Fawad Yusuf (Chief Executive), Mr. Muhammad Hasnain (Compliance Officer) and Mr. Muhammad Ali Ahmed (Compliance Officer) appeared for and on behalf of the Appellant. The Representatives while reiterating the stance as provided in the written response of the Appellant made additional submissions.

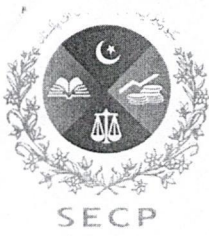
4. The Respondent dissatisfied with the response of the Appellant held that regulatory requirements relating to Know Your Customer (KYC), CDD and anti-money laundering have been implemented since 2012 in the interest of the general public, integrity of the Pakistani capital market and the country's international commitments. Therefore, in terms of powers conferred under section 40A of the Act, a penalty of Rs. 250,000 was imposed on the Appellant by the Respondent. The Appellant was further advised to examine its Anti-Money Laundering/Countering Financing of Terrorism (AML/CFT) policy and procedures and the accounts of its clients to ensure that the requirements contained in the AML Regulations are met in letter and spirit.



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5. The Appellant preferred the instant appeal on the following grounds:

- a) SCN places reliance upon an earlier review conducted by the Joint Investigation Team (JIT) which was formed to assess the compliance of the Appellant with the Regulations. The findings of the said JIT were addressed by the Appellant vide its replies through letters dated 11/10/18, 24/10/18 and email dated 22/10/18. Furthermore, even though the AML Regulations were drafted and promulgated by the Securities and Exchange Commission of Pakistan (Commission) in June 2018, it also took the Commission about three months to issue guidelines dated 11/09/18 on Anti-Money Laundering, Countering Financing of Terrorism, and Proliferation Financing (Guidelines) on how to comply with the Regulations. Furthermore, the Guidelines are extensive and require the implementation of a suitable training program for the management and employees alike for full compliance with the Regulations. Furthermore, five days before the Commission issued its Guidelines, the office of Appellant was visited by members of the JIT on 06/09/18 to gauge the level of its compliances with the AML Regulations which was unjustifiable and impractical. The Appellant was already in the process of consultation to devise policies and strategies to comply with the AML Regulations and during the hearing on 26/02/19 explained that any shortcoming may be due to the wide-ranging and extensive changes which required some time to be implemented and that they were in full compliance with the relevant laws. The Respondent, however, did not take into account the facts highlighted during the hearing and instead imposed a penalty of Rs 250,000/-.
- b) The Respondent's assertion that AML Regulations were new but the requirements contained, therein, were already introduced in 2012 by the then Karachi Stock Exchange (presently PSX) with the approval of Commission through regulation 4.18 (now 4.17) of PSX Rulebook (PSX's Regulation), does not hold merit, for the following reasons:
 - i. PSX's guidelines issued in 2012 for implementing KYC and CDD (PSX's KYC and CDD Guidelines) were only guidelines and neither PSX nor the Commission took cognizance on non-compliance of the PSX's guidelines since their notification in 2012.
 - ii. It would be totally unjustifiable for the Appellant to become fully compliant with the AML Regulations issued in June 2018 during the inspection period which started from 01/07/18 just 15 days after their promulgation. The Commission's



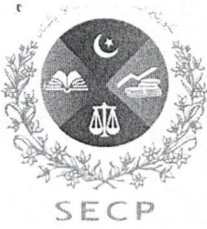
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Guidelines to effectively implement the Regulations also came just 15 days after the end of Inspection Period on 31/08/18. The Appellant ensured full compliance with the AML Regulations post inspection period as evidenced through the final explanation given vide Appellant's letter dated 24/10/19. The Respondent, therefore, should not impose severe penalty without allowing the Appellant an opportunity to rectify non-compliances.

6. The Respondent rebutted the arguments of the Appellant on the following grounds:

- a) The Respondent shared preliminary findings with the Appellant in respect of compliance status of AML Regulations conducted by JIT. The Appellant was found to be in non-compliance with the Regulations and the Respondent subsequently served the SCN. The AML Regulations were issued in 2018 but the requirements are not new as they were introduced in 2012 through PSX's Regulation which made it mandatory for the securities brokers to formulate and implement an effective KYC and CDD policy in accordance with PSX's KYC and CDD Guidelines. Furthermore, there is no material difference in terms of requirements in the regulatory framework of 2012 when compared to the AML Regulations. Therefore, the Appellant's argument that sufficient time was not available for compliance is incorrect and the Appellant was required to comply with requirements of the AML Regulations.
- b) Penalty was imposed on the Appellant in accordance with the law as prescribed under the AML Regulations read with section 40A of the Act.

7. We have heard the parties i.e. the Appellant and the Respondent. We are of the view that the regulatory requirements prescribed in the AML Regulations were not new as all securities brokers since 2012 had to comply with PSX Regulation to formulate and implement an effective KYC and CDD policy in accordance with PSX's KYC and CDD Guidelines and put in place requisite policies and procedures to curtail activities relating to money laundering and financing of terrorism. Furthermore, the Appellant had to ensure full compliance with the AML Regulations at all times, therefore, their assertion that it was not possible to be fully compliant or the inspection began too soon after their promulgation also does not hold merit.

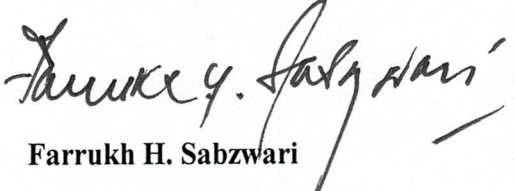


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8. In view of the above, we see no reason to interfere with the Impugned Order. The Impugned Order is upheld with no order as to cost.


Shaukat Hussain

Commissioner (CCD, Insurance)


Farrukh H. Sabzwari
Commissioner (SCD, AML)

Announced on:

10 JAN 2020